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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,655	09/10/2003	Barry M. Thompson	6956.07	3659
7590	05/24/2006			
David E. Bruhn DORSEY & WHITNEY LLP Intellectual Property Department 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402-1498			EXAMINER BOGART, MICHAEL G	
			ART UNIT 3761	PAPER NUMBER
DATE MAILED: 05/24/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/659,655

Applicant(s)

THOMPSON ET AL.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11 and 13-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6-9,11,13-15,18-21,23-25,27-29,31-33,35,36 and 38 is/are rejected.
- 7) ☒ Claim(s) 3-5,10,17,22,26,30,34 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowability Withdrawn

The indicated allowability of claims 2-7 and 12-39 is withdrawn in view of the newly discovered reference(s) to Kamen. Rejections based on the newly cited reference(s) follow.

Claim Objections

Claim 1 is objected to because of the following informalities:

Claim 1 recites the limitation "said fluid source nozzle" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6, 7, 9, 11, 13-16, 18, 20, 23, 25, 27-29, 31, 33, 36, 38 and 39 are rejected under 35 U.S.C. § 102(e) as being anticipated by Kamen (US 6,513,529 B1).

Regarding claims 1, 13, 15, 16, 18, Kamen teaches an apparatus comprising:

Art Unit: 3761

a head (70) substantially defining a plenum (74) having an outer surface, said plenum (74) having an inner periphery defining a generally central opening (18), said plenum (74) having an opening (at hose) in said outer surface adjacent to the inner periphery;

a plenum support (78, 90);

a plurality of manifold barriers (72, 90) carried by said plenum (74), wherein said manifold barriers (72, 90) cover a portion of said inner periphery adjacent to said fluid source hose (76);

a fluid source hose nozzle (76); and

a vacuum hose (82)(col. 4, line 57-col. 5, line 22)(see figure 5, infra).

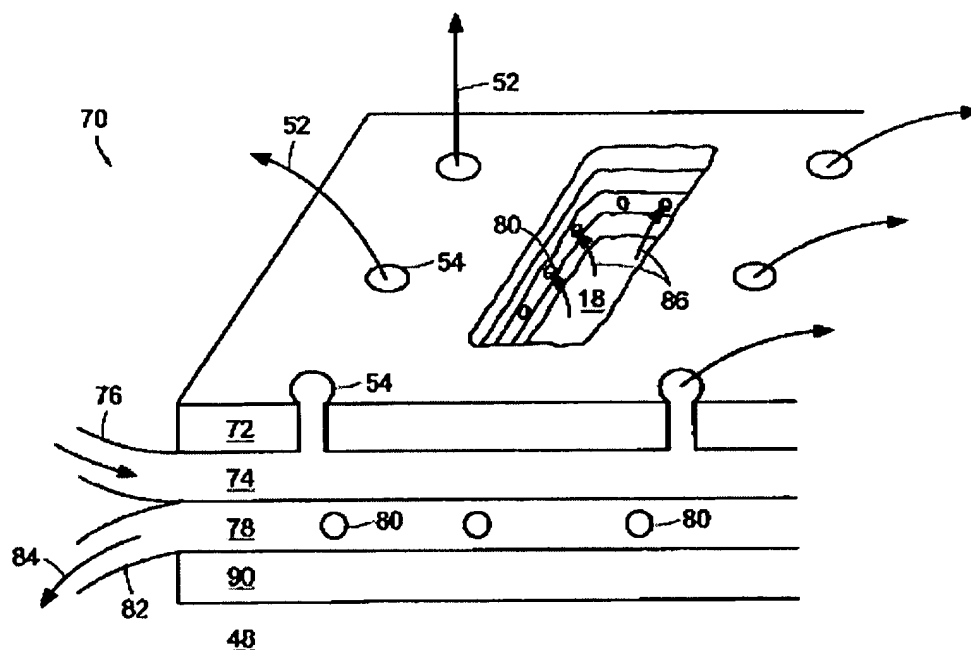


FIG. 5

Regarding claims 9, 28, 29, 31 and 33, Kamen teaches a fluid source (76) capable of supplying an inert gas. Kamen also teaches a device that can have greater inflow of vacuum than outflow of fluid, depending on how much vacuum is applied by a user of the device relative to

Art Unit: 3761

the amount of cleans fluid. These are functional limitation. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Regarding claim 20, Kamen teaches an inner periphery having a central opening (18) generally defining a 360 degree arc (figure 5).

Regarding claims 6 and 23, Kamen teaches fluid (22) that is provided as generally particle-free air to the head (col. 3, lines 29-50).

Regarding claims 7 and 14, Kamen teaches that the opening (18) can provide unidirectional, laminar airflow in the direction of vacuum hose (82).

Regarding claim 25, Kamen teaches a plenum having an adhesive bottom wall (90).

Regarding claims 11 and 27, Kamen teaches a porous plenum support (78, 80).

Regarding claim 28, see the discussion of claim 9, *supra*.

Regarding claim 36, see the discussion of claims 7, 14 and 25, *supra*.

Regarding claim 38, see the discussion of claims 11 and 28, *supra*.

Regarding claim 39, see the discussion of claim 9, *supra*.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

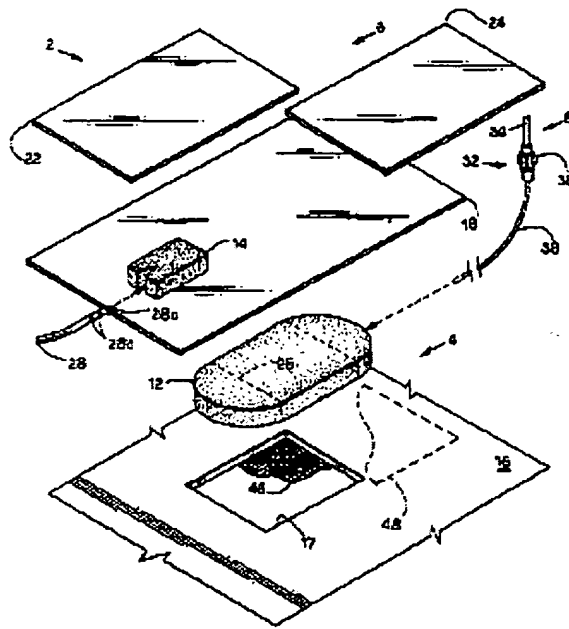
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 19, 21 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kamen as applied to claims 1, 6, 7, 9, 11, 13-16, 18, 20, 23, 25, 27-29, 31, 33, 36, 38 and 39 above and further in view of Zamierowski (US 6,071,267 A).

Kamen does not teach that the vacuum hoses and fluid supply hoses are on opposed sides of the head.

Zamierowski teaches a suction line (28) opposite from a gas supply line (38)(col. 5, lines 56-66). This allows the gas to have more extensive contact with the wound bed than if the two ports were right next to each other (figure 1).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to select the respective vacuum and gas supply port positions of Zamierowski for use in the device of Kamen in order to provide improved contact of the gas with the wound bed.

Claims 8, 24 and 35 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kamen and Zamierowski as applied to claims 1, 6, 7, 9, 10, 11, 13-16, 18-21, 23, 25, 27-29, 31-33, 36, 38 and 39 and further in view of Etes (US 4,153,055).

Kamen in view of Zamierowski do not teach an additional piece of sheet material operatively coupled to the device.

Etes teaches an adhesive layer (50) engaged with a release sheet (52) that protects the adhesive until it is adhered to a wearer's skin.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the release sheet of Etes to the adhesive layer of Kamen in view of Zamierowski in order to protect the adhesive layer.

Allowable Subject Matter

Claims 3-5, 10, 17, 22, 26, 30, 34 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claims 5, 17, 22, 30 and 34, the closest art of record, Zamierowski, fails to teach or fairly suggest the structure described in the rejections of claims 1, 15, 20, 29, 33 and 36 supra, in combination with a baffle between the fluid source hoses of the head unit.

Regarding claims 3, 4, 26 and 37, Zamierowski fails to teach or suggest that both manifold barriers (72, 90) are solid or that both are perforated, or that plenum (74) is non-porous.

Response to Arguments

Applicant's arguments with respect to claims 1, 3-11 and 13-39 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization

Art Unit: 3761

where this application or proceeding is assigned is (571) 273-8300 for formal communications.

For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
17 May 2006

TATYANA ZALUKAEVA
SUPERVISOR
PRIMARY EXAMINER

